

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DONALD MALONE, III, #381971

PETITIONER

v.

CAUSE NO. 1:15CV354-LG-RHW

EVAN HUBBARD, Warden

RESPONDENT

**ORDER ADOPTING PROPOSED FINDINGS OF FACT
AND RECOMMENDATION AND GRANTING
RESPONDENTS' MOTION TO DISMISS**

This cause comes before the Court on the Proposed Findings of Fact and Recommendation of United States Magistrate Judge Robert Walker entered in this cause on April 26, 2016. Magistrate Judge Walker reviewed the Respondents' Motion to Dismiss for Failure to Exhaust and determined that it should be granted, because Malone's Petition indicated, and counsel for the Respondents confirmed, that Malone had not filed an application for leave to seek post-conviction relief from his conviction and sentence in the state courts. Malone did not file a response to the Respondents' Motion to Dismiss, nor has he filed an objection to the Proposed Findings of Fact and Recommendation.¹

Under these circumstances, the Court need only review the Proposed Findings of Fact and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). After review of this matter, the Court finds that the Proposed Findings of

¹ The Proposed Findings of Fact and Recommendation was mailed to Malone's address on record with the Court, but it was returned as undeliverable. (See ECF No. 8).

Fact and Recommendation is neither clearly erroneous nor contrary to law. It will therefore be adopted as the opinion of this Court.

IT IS THEREFORE ORDERED AND ADJUDGED that the Proposed Findings of Fact and Recommendation of United States Magistrate Judge Robert H. Walker entered in this cause on April 26, 2016 [7] should be, and the same hereby is, adopted as the finding of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that Respondents' Motion to Dismiss [6] for Failure to Exhaust is **GRANTED**. Petitioner's 28 U.S.C. § 2241 habeas corpus application is **DISMISSED** without prejudice for failure to exhaust.

SO ORDERED AND ADJUDGED this the 27th day of May, 2016.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE